

by Charisse Hirschfeld, ARNP at the Walk-in Clinic at Memorial Hospital, also known as MWV Healthcare Associates, on April 29, 2008, complaining of headache, dizziness, and nausea, which conditions at that time had been troubling him for over one month, as described in MWV notes as, “on/off, waxes & wanes.” A standard physical examination was performed at that time, and Anthony was advised that he might take Claritin daily as needed, and that he should “eat good meals,” drink “[l]ots of fluids including water. No soda, no caffeine.”

6. A.D.’s mother was concerned about her son’s continuing complaints of headaches, dizziness and nausea. He complained of a “whooshing sound” in his left ear, spotty vision and numbness in his left hand. He also had trouble balancing on his bicycle. A.D. missed a good deal of school because of these problems, and Doreen W.B. wanted to find out the cause. Doreen W.B. repeatedly asked Dr. Rabideau, Dr. Kostecke and others to order a radiological study to make sure the headaches were not the result of neurologic problems. MWV- Memorial and associated health care practitioners refused, insisting that the headaches and dizziness resulted from a variety of ailments, including mononucleosis and influenza. Dr. Rabideau reported that A.D.’s symptoms were allergy related.

7. On September 26, 2008, A.D. went to MWV – Memorial complaining again of recurrent headaches. Anthony complained at that time that it felt “like a ‘drilling.’”

8. On October 21, 2008, A.D. was again seen at MWV – Memorial, once again complaining of headaches. He was told to drink fluids, and advised to take hot showers with steam.

9. On February 26, 2009, A.D. was seen again at MWV – Memorial complaining of severe headaches and nausea that had been bothering him for a week. He reported that he had been vomiting. The doctors concluded that this was attributable to a “cluster migraine,” and ordered Motrin (400 mg).

10. The next day (February 27, 2009), Doreen W.B. received a telephone call from school stating that something was wrong with A.D. and that he was gray. Doreen W.B. made an appointment for that afternoon to see Dr. Kostecke. Doreen W.B. brought A.D. home first as his appointment was not for a couple of hours. When they got home A.D. was screaming out in pain and vomiting. Doreen W.B. brought A.D. back to MWV – Memorial. Dr. Kostecke ordered a number of tests to explore whether the headaches might be caused by mononucleosis or influenza. The medical chart indicates that A.D. “appear[ed] unwell but not toxic.” Dr. Kostecke advised that it was probably a passing virus.

11. On April 15, 2009, A.D. reported again to MWV – Memorial, complaining of a “migraine” and vomiting. A referral was finally made to a pediatric neurologist, but the hospital advised that the appointment would be scheduled in approximately 6 months.

12. On April 20, 2009, Doreen W.B. brought A.D. back to MWV – Memorial where he was seen by Dr. Angus Badger who noted that A.D. had suffered from headaches for a year. Dr. Badger ordered acupuncture after concluding that A.D. was not suffering from a “classic migraine”. Dr. Badger indicated that he believed the headaches and nausea were caused

by excessive Advil. Dr. Badger discontinued the Advil and directed Doreen W.B. to walk with A.D. at least 45 minutes per day.

13. Following Dr. Badger's instructions, A.D. and his mother walked three times around their house, by the end of which A.D. was crying out in pain and could not hold his head up. The next morning Doreen W.B. phoned Dr. Kostecke's nurse and insisted that they perform a scan. Doreen W.B. told them there was something wrong with her boy and they needed to do something.

14. On April 24, 2009, a CT scan was done at the Memorial Hospital. That study revealed a complex mass in the posterior fossa with apparent compression of the fourth ventricle. The mass was estimated to be approximately 5.5 x 7 cm.

15. A.D. was transferred to Maine Medical Center where a craniotomy was performed on April 28, 2009, to remove the mass.

COUNT I -- MEDICAL NEGLIGENCE

16. At all relevant times, it was the duty of the defendants in accepting the plaintiff as a patient, to thoroughly conduct a physical examination of him, utilize appropriate diagnostic techniques, procedures and devices, to arrive at an accurate and complete diagnosis under the circumstances, and prescribe and implement a competent and accurate treatment program, consistent with all applicable standards of medical care and treatment, common law and statutory.

17. Contrary to the applicable standards of medical care and treatment required under the circumstances, wholly unmindful, and regardless of their said duties, defendants did fail in the performance thereof.

18. As a direct and proximate result of the failure of MWV, Memorial Hospital, Dr. Kostecke, and Dr. Badger to appropriately evaluate the continuing complaints of severe headaches, poor balance, nausea, vomiting and related ailments for a period of a year or more, A.D. was caused to suffer loss of sight in both eyes, most significantly the left eye (now rated at 20/400 – considered to be legally blind in the left eye), and to undergo surgery in April 2009 to treat the posterior fossa mass that had grown substantially from the time it should have first been recognized and treated.

19. As a direct and proximate result of the failure of MWV, Memorial Hospital, Dr. Kostecke, and Dr. Badger to appropriately evaluate the continuing complaints of headaches, poor balance, nausea, vomiting and related ailments, Doreen W.B. was caused to incur medical costs and continues to incur and pay necessary and causally-related medical costs.

WHEREFORE, plaintiff Doreen W.B., individually and as mother and next friend of her son, A.D., requests that this Honorable Court will:

- A. Schedule trial for the adjudication of the claims asserted in this case;
- B. Make an award of all damages authorized by state and federal law under the circumstances, including but not limited to all costs incurred on behalf of A.D. resulting from the negligence of the defendants as described hereinabove, compensatory, and hedonic damages
- C. Grant such other and further relief as justice requires.

Respectfully submitted,

Doreen W.B., Individually
And as m/n/f of A.D.

By her attorneys,

NIXON, RAICHE, VOGELMAN, BARRY,
SLAWSKY & SIMONEAU

Dated: January 27, 2011

By: /s/ David P. Slawsky
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